

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ANTONIO MAURICE WORRELL,

Petitioner,

v.

**Civil Action No. 5:07cv90
(Judge Stamp)**

UNITED STATES PAROLE COMMISSION,

Respondent.

**REPORT AND RECOMMENDATION ON
PETITIONER'S MOTION TO GRANT RELIEF**

The *pro se* petitioner initiated this case by filing a Petition for Writ of Habeas Corpus by a Person in Custody in the State of West Virginia. On September 20, 2007, the respondent was directed to show cause why the petition should not be granted. Pursuant to that Order, a response was due on or before October 20, 2007.

On October 31, 2007, the petitioner filed a Motion to Grant Relief. In his motion, the petitioner asserts that because the respondent failed to timely file a response to the petition, the petitioner should be granted the relief sought in the petition, immediate release. That same day, the respondent filed a Motion for Enlargement of Time to file a response. That motion was granted on November 1, 2007, and the respondent filed its response on November 8, 2007.

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend . . . and that fact is made to appear by affidavit or otherwise, the Clerk shall enter the party’s default.” However, “[n]o judgment by default shall be entered against the United States or an officer or agency thereof

unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.”
Fed.R.Civ.P. 55(e).

In this instance, the Court has found good cause for Respondents initial failure to timely respond to the Court’s Show Cause Order and has therefore, deemed the response filed on November 8, 2007, timely. Accordingly, the undersigned recommends that the petitioner’s Motion to Grant Relief (dckt. 9) be **DENIED**.

Within ten (10) days after being served with a copy of this recommendation, any party may file with the Clerk of Court written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections shall also be submitted to the Honorable Frederick P. Stamp, Jr., United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send a copy of this Opinion/Report and Recommendation to the *pro se* petitioner by certified mail, return receipt requested, to his last known address as shown on the docket. The Clerk is further directed to provide copies of this Opinion/Report and Recommendation to counsel of record via electronic means.

DATED: April 18, 2008.

John S. Kaull
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE